

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2426

SPONSOR: Senator Crist

SUBJECT: Electronic Monitoring/Pretrial

DATE: April 5, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill amends s. 648.387, F.S., to authorize a bail bond agent to electronically monitor a pre-trial releasee if ordered by the court. The bill also amends s. 903.0472, F.S., to authorize the court to order electronic monitoring and the payment of a reasonable fee by the releasee. It also prohibits the released defendant from altering, tampering with, damaging, or destroying electronic monitoring equipment, making violation of the prohibition a third degree felony.

This bill substantially amends sections 648.387 and 903.0472 of the Florida Statutes:

II. Present Situation:

Currently, all persons detained for criminal offenses have a right to a first appearance before a judge within 24 hours of their arrest. At the first appearance, the judge conducts a hearing to determine whether there is a reason that the defendant should not be released pending trial and, if not, the conditions of pretrial release. Fla. R. Crim Pro 3.130(d) and 3.131(b).

Every person has the right to pretrial release unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great. However, the court must ensure that conditions of pretrial release will: (1) reasonably protect the community from risk of physical harm to persons; (2) assure the presence of the accused at trial; and (3) assure the integrity of the judicial process. Fla. R. Crim. Pro. 3.131(a). The judge at first appearance is authorized to determine the amount of any monetary bail that may be required and to execute an unsecured appearance bond in an amount specified by the judge. Fla R. Crim. Pro. 3.131(b). Section 907.041(3)(a), F.S., provides that release on nonmonetary conditions is possible at first appearance for those granted pretrial release unless they have been arrested for one of a number of crimes that are defined as a “dangerous crime.”

The amount of any bail is set by the court, and the defendant can either post cash bail in the full amount or obtain a bail bond through a licensed bail bond agent. The court may also release the defendant on his or her own recognizance, or allow the defendant to enter a pretrial intervention or diversion program.

Section 907.041(4)(b), F.S., provides the court with discretion to release a defendant, including one accused of a dangerous crime, on electronic monitoring if the facts and circumstances on the record warrant such a release. In several counties and municipalities, the local law enforcement agency has responsibility for an electronic monitoring program for pre-trial releasees. In the juvenile law setting, electronic monitoring is one of the forms of pretrial detention which can be ordered if allowed by the risk assessment instrument. *See* s. 985.215, F.S. Electronic monitoring is already utilized in the adult context as a condition of probation as provided in s. 948.03, F.S., and is administered by the Department of Corrections.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 648.387, F.S., to authorize bail bond agents to contract with government entities to provide electronic monitoring if the court orders monitoring as a condition of pretrial release. The bail bond agent is authorized to assess and collect a reasonable fee from the defendant on pretrial release, and the releasee's failure to pay the fee is grounds for the agent to remand the defendant to the sheriff or the court. The bill provides that the assessment and collection of the fee will be exempt from the provisions of s. 648.26, F.S., which authorizes the Department of Financial Services to make rules regarding the operations of bail bond agents.

Section 2 of the bill amends the bail statute (s. 903.0472, F.S.) to authorize courts to order electronic monitoring as a condition of pretrial release. The court is also authorized to order the defendant to pay a reasonable fee, and failure to make timely payment is grounds for the defendant to be remanded to the sheriff or the court. This section also requires the electronic monitoring service provider to report any violations of pretrial release conditions to the court, the sheriff, the state attorney, and the bail agent.

Section 2 also creates a new third degree felony offense of altering, tampering with, damaging, or destroying electronic monitoring equipment. It also provides that nothing in the new electronic monitoring provision is to be construed to limit any other provisions of chapter 903, F.S.

Section 3 establishes an effective date of October 1, 2004, and provides that the bill only applies to offenses committed on or after that date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

One issue which could arise in the bill is whether the nonpayment of fees which would result in a violation of pretrial release would constitute an impermissible “imprisonment for debt.” Article I, Section 11, of the Florida Constitution forbids the government from imprisoning persons for nonpayment of financial obligations, unless the debtor has engaged in fraud. This provision, however, does not generally apply to criminal fines, and if the fees associated with electronic monitoring are considered a court fine or fee, it should withstand constitutional scrutiny. See *Turner v. State*, 168 So.2d 192 (Fla. 3d DCA 1964). In a similar vein, if the fees are viewed as an obligation for pretrial release similar to payment of a cash bond, there should not be a constitutional issue.

However, the Florida Supreme Court has also held that a probationer cannot be imprisoned for failing to pay restitution unless it is demonstrated that the probationer had the ability to pay. *Stephens v. State*, 630 So.2d 1090 (Fla. 1990). Because the bail bond service would be administering electronic monitoring pursuant to a court order, the courts could apply the constitutional prohibition if the bail bond agent’s electronic monitoring service is viewed as an instrument of the state and the fees associated with the maintenance of the electronic monitoring are viewed as a debt.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Bondsmen would be able to charge a fee from the defendant for electronic monitoring services and would be able to contract with local governments for these services. In addition, companies which provide the equipment and monitoring services would be able to profit from increased demand for their products and services.

C. Government Sector Impact:

Those local governments or courts currently providing electronic monitoring services in their jurisdictions would have the option of permitting bail bond services to provide these services. To the extent that this may relieve the local government entity from costs of administering the electronic monitoring program, this may result in a reduction in costs for those governments currently providing this form of pretrial release.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
